

REMARKS

The applicant hereby brings the examiner's attention to the fact that the pending application was filed as a divisional application claiming priority to U.S. Application Serial No. 09/196,127, now issued as U.S. Patent No. 6,760,311. The applicant further notes that U.S. Application Serial No. 10/781,068 was also filed as a divisional application claiming priority to U.S. Application Serial No. 09/196,127. The '068 application has been abandoned.

The examiner provisionally rejects claims 42 – 44, 46 – 49, 51, and 53 on the grounds of non-statutory obviousness-type double patenting in view of claims 27 – 33, 35, and 37 of co-pending U.S. Application Serial No. 10/781,068. However, claims 27 – 33, 35, and 37 were cancelled from the '068 application in a preliminary amendment mailed to the USPTO on 18 February 2004. Further, the '068 application is no longer pending per a Notice of Abandonment from the USPTO dated 28 February 2006. Thus, there can be no double patenting. The applicant respectfully requests reconsideration and withdrawal of this double patenting rejection.

The examiner further rejects claim 53 on the grounds of non-statutory obviousness-type double patenting in view of claim 76 of U.S. Patent No. 6,760,311. The pending application is a divisional application of the '311 patent, herein referred to as the parent case. Pending claim 56 corresponds to claim 159 of the originally filed application in the parent case. Claim 76 of the '311 patent corresponds to claim 158 of the originally filed application in the parent case. In a restriction requirement dated 10 December 2001, the USPTO restricted claim 158 from claim 159. While the applicant submitted arguments traversing the restriction requirement, the examiner made the restriction final in an office communication mailed 2 April 2002. Due to the final restriction requirement, the applicant filed the currently pending divisional application. Thus, per 35 U.S.C. §121 and MPEP §804.01, the pending double patenting rejection cited against claim 53 is improper and must be withdrawn.

The examiner also asserts that Funk (US6169884) anticipates claims 42 – 46, 48, and 53 under §102(e). Further, the examiner asserts that claims 47 and 49 – 52 are obvious under §103(a) in view of Funk. In response, the applicant amends claims 42, 45 – 48, 52, and 53, and adds new claims 54 and 55. Generally, the amendments to independent claims 42 and 53 are supported by at least p. 10, ll. 7 – 26 and p. 17, ll. 28 - 30 and the originally filed claims of the instant specification (see, e.g., the data transmission rate limitations of dependent claim 45). No new matter is added.

The claimed invention relates to controlling the temperature of a wireless device. As amended, independent claim 42 claims a transceiver comprising a temperature measuring device, a transceiver, and a processor. The temperature measuring device measures a temperature of the transceiver, and the processor selectively modifies a transmit power level and a transmission data rate associated with transmitting data from the transceiver based on a comparison between the measured temperature and a threshold temperature. Independent claim 53 claims a mobile station corresponding to the transceiver of claim 42.

Contrary to the examiner's assertions, nothing in Funk teaches or suggests modifying a transmission data rate based on a measured temperature. Instead, Funk teaches changing the transmission of a non-data signal, such as an SAT (Supervisory Audio Tone) signal, from a continuous transmission to a discontinuous transmission (col. 4, ll. 29 – 42). Such a duty cycle modification of a non-data signal cannot be construed as equivalent to the claimed data rate modification of claims 42 and 53.

Further, nothing in Funk teaches or suggests modifying the transmit power level AND the transmission data rate based on a measured temperature. Instead, Funk explicitly teaches modifying a transmit power level OR modifying a duty cycle of a non-data signal. See col. 4, ll. 32 – 33.

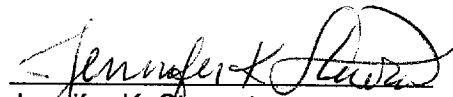
For at least these reasons, Funk does not teach or suggest the specific transmit power level and transmission data rate modification limitations of independent claims 42 and 53. Thus, independent claims 42 and 53, and all claims depending therefrom, are new and non-obvious over the cited art. The applicant respectfully requests reconsideration.

The applicant further submits that at least claims 47 and 54 add patentably distinct limitations to their respective independent claims. Both claims 47 and 54 claim that the processor causes an indication of the modified transmission data rate to be transmitted to a remote device in the radio communication system. Because nothing in Funk mentions transmitting any type of radio transmission data rate indication to a remote device in the radio communication system, the applicant respectfully request that the examiner also separately reconsider the rejections of at least claims 47 and 54.

In light of the above remarks and enclosed amendments, the applicant submits that claims 42 – 55 are patentably distinct from the cited art. Thus, the applicant requests that the examiner reconsider the rejections and issue a Notice of Allowance. Should any issues remain, the applicant requests that the examiner call the undersigned so that any such issues may be expeditiously resolved.

Respectfully submitted,

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